

United States
Circuit Court of Appeals
For the Ninth Circuit.

WM. H. MOORE, Jr., Trustee in Bankruptcy of the Estate of
BERLIN DYE WORKS AND LAUNDRY COMPANY, a
Corporation, Bankrupt,

Appellant,

vs.

C. K. DOUGLAS,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Southern District of California, Southern Division.

Filed

OCT 10 1915

F. D. Monckton,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

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For Appellee:

E. B. DRAKE, Esq., 1308-9-10 Washington
Building, Los Angeles, California. [3*]

*In the District Court of the United States, Southern
District of California, Southern Division.*

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY COMPANY, a Corporation,

Bankrupt,

C. K. DOUGLAS,

Petitioner,

vs.

WM. H. MOORE, Jr., Trustee in Bankruptcy of the
Estate of Berlin Dye Works & Laundry Com-
pany, a Corporation, Bankrupt,

Respondent.

Citation on Appeal.

United States of America,—ss.

The President of the United States to C. K. Douglas,
Greeting:

You are hereby cited and admonished to appear in
the United States Circuit Court of Appeals for the

*Page-number appearing at foot of page of certified Transcript of
Record.

Ninth Circuit in the City of San Francisco, State of California, on the 9th day of August, 1915, pursuant to the appeal duly obtained and filed in the Clerk's office of the District Court of the United States, for the Southern District of California, Southern Division, wherein you, as claimant and petitioner are appellee, and Wm. H. Moore, Jr., Trustee in Bankruptcy of the estate of Berlin Dye Works & Laundry Company, a corporation, bankrupt, is the appellant, to show cause, if any there be, why the orders, and each of them, in [4] said appeal mentioned should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf, and to do and receive what may appertain to justice to be done in the premises.

WITNESS, the Honorable OSCAR A. TRIPPET, United States District Judge for the Southern District of California, on the 12th day of July, in the year of our Lord one thousand nine Hundred and fifteen.

OSCAR A. TRIPPET,

District Judge. [5]

[Endorsed]: Original. No. 1367. In United States District Court, Southern District of California, Southern Division. In the Matter of Berlin Dye Works & Laundry Company, a Corporation, Bankrupt, C. K. Douglas, Petitioner, vs. Wm. H. Moore, Jr., Respondent. Citation on Appeal. Filed Jul. 13, 1915, at 25 min. past 4 o'clock, P. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy.

Service of the within Citation on Appeal is hereby

admitted this 13th day of July, 1915, A. M. E. B. Drake, Attorney for C. K. Douglas, Petitioner. [6]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY COMPANY, a Corporation,
Bankrupt. [7]

In the District Court of the United States, Southern District of California, Southern Division.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY COMPANY, a Corporation,
Bankrupt.

[Proof of Unsecured Debt Due C. K. Douglas.]

At Los Angeles, in said District of Southern California, on the 13th day of February, A. D. 1914, came C. K. Douglas, in the County of Los Angeles, in said District of California, and made oath and says that the Berlin Dye Works and Laundry Company, the corporation against which a petition for adjudication of bankruptcy has been filed, and which adjudication has been had, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of Ten Thousand Five Hundred Thirteen and 32/100 Dollars (\$10,513.32); that the consideration of said debt is as follows, to wit:

A certain judgment rendered in favor of this de-

ponent against said Berlin Dye Works and Laundry Company, a corporation, in the Superior Court of the State of California, in and for the County of Los Angeles, styled, C. K. Douglas, plaintiff, vs. Berlin Dye Works and Laundry Company, a corporation, on July 11th, 1913, for the sum of Ten Thousand Dollars (\$10,000.00) and costs therein taxed at Ninety-seven and 10/100 Dollars (\$97.10), and all of which appears by duly certified copy of said judgment hereto attached and made a part hereof as Exhibit "A"; that no part of said debt has been paid; that [8] there are no setoffs or counterclaims to or against the same, and that deponent has not, nor has any person by his order, or to the knowledge or belief of said deponent, for his use, had or received any manner of security for said debt whatsoever.

C. K. DOUGLAS,

Creditor.

Subscribed and sworn to before me this 13th day of February, 1914.

[Seal]

MORA BARNES,

Notary Public in and for the County of Los Angeles,
State of California. [9]

*In the Superior Court of the State of California, in
and for the County of Los Angeles.*

C. K. DOUGLAS,

Plaintiff,

vs.

BERLIN DYE WORKS & LAUNDRY COM-
PANY, a Corporation,

Defendant.

EXHIBIT "A."

Judgment on Verdict in Open Court.

This action came on regularly for trial on the 10th day of July, 1913. The said parties appeared by their attorneys, E. B. Drake, Esq., counsel for plaintiff, and Hiccox & Crenshaw for defendant. A jury of 12 persons was regularly *impaneled* and sworn to try said action. Witnesses on the part of plaintiff and defendant were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into court, and being called answered to their names, and duly rendered their verdict in writing in favor of plaintiff in words and figures as follows, to wit:

Title of Court and Cause: "We the jury in the above-entitled action, find for the plaintiff and assess the damages at the sum of \$10,000.00, this 11th day of July, 1913.

F. E. WILSON,
Foreman."

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said plaintiff have and recover from said defendant damages in the sum of \$10,000.00, together with his costs and disbursements incurred in this action, amounting to the sum of 97.10 dollars.

[10]

(In pencil: O.K.—W. J. Wilson.)

Clerk's Office of the Superior Court, in and for the
County of Los Angeles, State of California,—ss.

I, the undersigned, clerk of said court, do hereby certify the foregoing to be a full, true and correct copy of the Judgment entered in the above-entitled action.

Attest my hand and the seal of said Superior Court,
this 13 day of Feb. 1914.

H. J. LELANDE,
Clerk.

[Seal]

By F. J. Adams,
Deputy.

[Endorsed]: No. 97,386. Superior Court, County of Los Angeles. Department No. 3. C. K. Douglas, Plaintiff, vs. Berlin Dye Works and Laundry Co., a Corp., Defendant. Judgment on Verdict. Filed Jul. 11, 1913. H. J. Lelande, Clerk. By C A. Cattern, Deputy. Docketed Jul. 12, 1913. Entered Jul. 12, 1913, Book 233, Page 244. By G. E. Ross, Deputy Clerk.

[Endorsed]: Original. No. 1367. In the District Court of the United States, Southern District of California, Southern Division. In the Matter of Berlin Dye Works and Laundry Company, a Corporation, Bankrupt. Proof of unsecured Debt. Filed Feb. 14, 1914, at 30 Min. Past 10 o'clock A. M. Lynn Helm, Referee. C. Meade, Clerk. E. B. Drake, Attorney at Law, 1308-9-10, Washington Building, Main 3073, F. 3815, Los Angeles, Cal. [11]

*In the District Court of the United States, Southern
District of California, Southern Division.*

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY CO., a Corporation,

Bankrupt.

Objection to Claim of C. K. Douglas for \$10,513.32.

Comes now Wm. H. Moore, Jr., Trustee in Bankruptcy of the above-named bankrupt corporation, and objects to the claim of C. K. Douglas, filed herein for the sum of \$10,513.32, on the following grounds, to wit:

I.

That said claimant is not entitled to prove a claim against the above-named bankrupt estate.

II.

That the judgment, an abstract of which, marked Exhibit "A," is attached to claimant's proof of debt on file herein, is not a final judgment, same having been appealed by the Berlin Dye Works & Laundry Company, a corporation, now bankrupt, from the Superior Court of the State of California, in and for the County of Los Angeles, to the Supreme Court of the State of California and not having yet been decided by said court.

III.

That claimant's proof of debt filed herein for \$10,513.32, according to the judgment upon which it is based, an abstract of which, marked Exhibit "A," is

attached to claimant's proof of debt, should be only \$10,097.10. [12]

WHEREFORE, said Trustee prays that the claim of C. K. Douglas, filed herein for the sum of \$10,-513.32, be disallowed and expunged from the records.

WM. H. MOORE, Jr.,

Trustee.

W. T. CRAIG & CARROLL ALLEN and

BENJ. E. PAGE and DAVE F. SMITH,

Attorneys for Trustee.

United States of America,

Southern District of California,

Southern Division,

County of Los Angeles,—ss.

Wm. H. Moore, Jr., being duly sworn, says: That he is Trustee in the foregoing entitled matter; that he has read the foregoing Objection to Claim of C. K. Douglas and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters that he believes it to be true.

WM. H. MOORE, Jr.

Subscribed and sworn to before me this 23d day of June, 1914.

[Seal]

LOIS DUNLAP,

Notary Public in and for the County of Los Angeles,
State of California.

[Notarial Seal.]

[Endorsed]: Orig. No. 1367. In United States District Court, Southern District of California,

Southern Division. In the Matter of Berlin Dye Works & Laundry Co., a Corporation, Bankrupt. Objection to Claim of C. K. Douglas for \$10,513.32. Received Copy of the Within Objection This 23 Day of June, 1914. E. B. Drake, Attorney for C. K. Douglas. Benj. E. Page & Dave F. Smith, W. T. Craig and Carroll Allen, Board of Trade Rooms, 725 Higgins Building. Telephones: Home 10112, Sunset Main 4622, Los Angeles, Cal., Attorneys for Trustee. filed Jun. 23, 1914, at — Min. Past 4 o'clock P. M. Lynn Helm, Referee. C. Meade, Clerk. [13]

In the District Court of the United States, Southern District of California, Southern Division.

In the Matter of BERLIN DYE WORKS AND
LAUNDRY COMPANY, a Corporation,
Bankrupt.

Supplemental Affidavit of E. B. Drake.

State of California,
County of Los Angeles,—ss.

The affiant, being first duly sworn, deposes and says:

That he is now, and at all times mentioned has been, admitted to practice law in all courts of record in the State of California, and is now and was at all times mentioned herein the attorney for the judgment plaintiff, C. K. Douglas.

That the judgment mentioned in the affidavit of C. K. Douglas filed as a basis of proof of his unsecured debt herein, and which judgment is Exhibit "A" to the said Douglas's affidavit, has now become

final in this, that appeal was had from said judgment by the Berlin Dye Works and Laundry Company, a Corporation, Bankrupt, and the Supreme Court of this state, in said appeal L. A. No. 3791, affirmed the said judgment on December 17th, 1914, and that the same is now final.

Further deponent sayeth not.

E. B. DRAKE.

Subscribed and sworn to before me this 18th day of January, 1915.

[Seal] MORA BARNES,
Notary Public in and for the County of Los Angeles,
State of California. [14]

[Endorsed]: Original No. 1367. In the District Court of the United States, Southern District of California, Southern Division. In the Matter of Berlin Dye Works and Laundry Company, a Corporation, Bankrupt. Supplemental Affidavit of E. B. Drake. Filed Jan. 18, 1915 at — min. past 3 o'clock P. M. Lynn Helm, Referee. C. Meade, Clerk. E. B. Drake, Attorney at Law, 1308-9-10 Washington Building. Main 3073 F 3815. Los Los Angeles, Cal. [15]

*In the District Court of the United States of the
Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY CO., a Corporation,
Bankrupt.

[Report of Referee in Bankruptcy.]

To the Honorable, the Judges of the United States
District Court, Southern District of California.

I, Lynn Helm, Referee in Bankruptcy, in charge
of the above-entitled proceedings respectfully represents, that in the course of said proceedings on the
6th day of April, 1915, an order was entered disallowing the claim of C. K. Douglas filed in said proceedings, which order is in words and figures as follows:

*“In the District Court of the United States for the
Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY CO., a Corporation,

Bankrupt.

**Findings of Fact and Conclusions of Law on Claim
of C. K. Douglas and Order Disallowing Said
Claim.**

C. K. Douglas having filed a claim against the
above-named bankrupt estate on February 14th,
1914, and objections having been made to the allowance of the claim by Wm. H. Moore, Jr., Trustee in
Bankruptcy of the Berlin Dye Works & Laundry
Company, a corporation, bankrupt, said claim and
the objections thereto came on regularly for hearing
before Lynn [16] Helm, referee before whom the
above-named bankruptcy matter is now pending, on
February 1st, 1915, at 2:00 P. M. of said day, claim-

ant, C. K. Douglas, being represented by E. B. Drake, Esquire, and the trustee being represented by W. T. Craig, Esquire, Carroll Allen, Esquire, Benjamin E. Page, Esquire, Dave F. Smith, Esquire and A. Henderson Stockton, Esquire. That at said hearing evidence was introduced on behalf of the claimant and the trustee herein, and after due consideration the referee finds the facts to be as follows, to wit:

I.

That a judgment was entered in favor of said claimant, C. K. Douglas, and against the Berlin Dye Works & Laundry Company, a corporation, said bankrupt, on July 11th, 1913, in the Superior Court of the State of California, in and for the County of Los Angeles, for the sum of \$10,000.00. That said judgment was recovered in an action theretofore commenced by said claimant, C. K. Douglas, against the bankrupt corporation to recover damages for personal injuries suffered by said C. K. Douglas by reason of the alleged negligence of the said Berlin Dye Works & Laundry Company, a corporation, bankrupt.

II.

That after the said judgment was entered, and on September 10, 1913, the Berlin Dye Works & Laundry Company, a corporation, now bankrupt, appealed from said judgment to the Supreme Court of the State of California, executing a cost bond in the sum of \$300.00; but did not execute a supersedeas bond.

III.

That on September 15th, 1913, an involuntary peti-

tion in bankruptcy was filed against said Berlin Dye Works & Laundry Company, a corporation, now bankrupt and on October 7, 1913, it was duly adjudged a bankrupt. [17]

IV.

That on February 14th, 1914, said C. K. Douglas filed a claim against the above-named bankrupt corporation, said claim being based upon an abstract of said judgment entered July 11, 1913, in the Superior Court of the State of California, in and for the County of Los Angeles.

V.

That on April 17th, 1914, a stipulation between the trustee and the claimant was filed in the Supreme Court of the State of California, and motion made in said Supreme Court to advance and submit the appeal in the case of C. K. Douglas against the Berlin Dye Works & Laundry Company, a corporation, and it was accordingly done.

VI.

That on April 21st, 1914, the claim of C. K. Douglas was presented to this Court for allowance and oral objections were made thereto at said time, upon the ground that said C. K. Douglas has no provable claim against the estate of said bankrupt and the dividend that day declared on all claims proved but not allowed was suspended. That on July 23, 1914, formal written objections were filed on behalf of the Trustee to the claim of C. K. Douglas, upon the grounds set forth in said written objections.

VII.

That on December 17th, 1914, the judgment of the

Superior Court of the State of California, in and for the County of Los Angeles, in favor of C. K. Douglas and against the Berlin Dye Works & Laundry Company, a corporation, now bankrupt, on appeal was duly affirmed by the Supreme Court of the State of California, and said judgment became final on January 16th, 1915. [18]

CONCLUSIONS OF LAW.

From the foregoing findings of fact the following conclusions of law are made by said Referee:

I.

That at the date of the filing of the petition and of the adjudication in bankruptcy herein the said judgment entered in the Superior Court of the State of California, in and for the County of Los Angeles, in favor of C. K. Douglas and against the Berlin Dye Works & Laundry Company, a corporation, now bankrupt, for \$10,000.00 was not final judgment, nor a fixed liability absolutely owing at said time.

II.

That the claim of C. K. Douglas is not a provable debt in bankruptcy against the estate of the Berlin Dye Works & Laundry Company, a corporation, bankrupt.

Now, therefore, in view of the foregoing findings of fact and conclusions of law.

IT IS ORDERED, ADJUDGED AND DECREED that the claim of C. K. Douglas filed herein on February 14, 1914, be disallowed and expunged from the files.

DATED: April 6, 1915.

LYNN HELM,
Referee in Bankruptcy."

That afterwards on the 16th day of April, 1915, C. K. Douglas, who filed said claim in said proceedings as a creditor, feeling aggrieved at said order filed a petition for review which was granted, which petition for review is hereto attached. The order set forth in said petition for review is not the order entered by me on the 6th day of April, 1915, disallowing and expunging from the files said claim of C. K. Douglas, but is only the concluding portion thereof, the order being as hereinbefore set forth. [19]

That a summary of the evidence on which said order was based is set forth in said order and in the opinion which I filed on making said order.

The reason for making said order was fully set forth in my opinion upon which said order was entered which opinion is in words and figures as follows: [20]

**[Opinion of Referee] on Proof of Claim of C. K.
Douglas.]**

*In the District Court of the United States, Southern
District of California, Southern Division.*

In the Matter of BERLIN DYE WORKS AND
LAUNDRY COMPANY, a Corporation,
Bankrupt.

E. B. DRAKE, Esq., Attorney for Claimant;
W. T. CRAIG, Esq., and CARROLL ALLEN,
Esq., Attorneys for Trustee;

HELM, Referee:

This is a proof of claim filed herein February 14th, 1914, by C. K. Douglas upon a judgment rendered

July 11th, 1913, in the Superior Court of the State of California, in and for the County of Los Angeles for the sum of Ten Thousand (10,000) Dollars damages recovered in an action brought by C. K. Douglas against the bankrupt corporation for personal injuries suffered by the claimant by reason of the alleged negligence of the bankrupt. After the rendition of this judgment on September 10th, 1913, the bankrupt appealed from said judgment to the Supreme Court of the State of California executing a cost bond in the sum of Three Hundred (300) Dollars; but did not execute a supersedeas bond as provided in the Code of Civil Procedure of the State of California, Section 942. On September 15th, 1913, an involuntary petition in bankruptcy was filed against the bankrupt and on the 7th day of October, 1913, it was duly adjudged a bankrupt. On April 17th, 1914, a stipulation between the Trustee herein and the bankrupt was filed and motion made to advance and submit the appeal in the case of C. K. Douglas [21] against the Berlin Dye Works in the Supreme Court, and it was accordingly done. April 21st, 1914, the claim of Douglas was presented for allowance but oral objection being made thereto the dividend that day declared on all claims proved, but not allowed, was suspended. On June 23, 1914, formal written objections were filed on behalf of the Trustee to the claim of Douglas on the ground that said claim was founded *in tort*, that it had not passed to final judgment at the time of the filing of the petition in bankruptcy, and was unliquidated, and was not a claim allowable in bankruptcy. On December

17th, 1914, the judgment of the Superior Court in favor of C. K. Douglas on appeal was duly affirmed by the Supreme Court of California and became final January 16th, 1915. The foregoing undisputed facts appeared upon the hearing of the said claim.

The only question here presented is whether the claim is one provable and allowable against the bankrupt's estate. Section 63a of the Bankruptcy Act provides that:

“Debts of the bankrupt which may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against *him* plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied.

* * *

[22]

It is conceded that an unliquidated claim for damages for a personal injury which has not been reduced to judgment prior to the filing of the petition

in bankruptcy is not allowable in bankruptcy. In *re Yates*, 8 A. B. R. 70, 114 Fed. 365; In *re Ostrum*, 26 A. B. R. 273, 185 Fed. 988; In *re Wigmore*, 10 A. B. R. 661; 1 *Remington on Bankruptcy*, 2d ed., sec. 635.

On the other hand if a claim is reduced to judgment before the filing of the bankruptcy petition it may be proved as a judgment, though not, if not reduced to judgment until after the filing of the petition. In *re Crescent Lumber Company*, 19 A. B. R. 112, 154 Fed. 724.

Whether or not this claim was reduced to judgment and was a fixed liability absolutely owing at the time of the filing of the petition against this bankrupt must be determined by the State Law of California. In *re Talbot*, 7 A. B. R. 29, 110 Fed. 924; In *re Brown*, 21 A. B. R. 123, 164 Fed. 673.

The question whether or not a debt is provable turns upon its status at the time of the filing of the petition. In the case of *In re Neff*, A. B. R. 23, 157 Fed. 57, the Court said:

“The status of a claim must depend upon its provability at the time the bankrupt’s petition was filed. At that time it must come within the definition of section 63 of the Bankruptcy Act; it cannot be benefited by its status at a later date.”

In *re Pettingell & Co.*, 14 A. B. R. 728, 137 Fed. 840, the Court said:

“The provability of a claim under the Bankruptcy Act of 1898 depends upon its status at the time the petition in bankruptcy is filed; if

then 'provable' within the definition of section 63 it may be proved; otherwise not."

In *Slocum v. Soliday*, 25 A. B. R. 460, 183 Fed. 410, the Circuit Court of Appeals said: [23]

"In order that the claim may be proved it must have existed at or before the filing of the petition in bankruptcy which the adjudication follows."

A judgment is defined in the Code of Civil Procedure of the State of California, section 577 as follows:

"A judgment is the final determination of the parties in an action or proceeding."

"An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal is passed, unless the judgment is sooner satisfied." (Code of Civil Procedure, sec. 1049.)

In the case of *Feeney v. Hinckley*, 134 Cal. 467, the Supreme Court of the State of California, Mr. Justice Henshaw delivering the opinion, said:

"An action will not lie upon a judgment until it has become final. Until that time has arrived, no cause of action upon the judgment has accrued. (*Hills v. Sherwood*, 33 Cal. 474, 479.) In *Gilmore v. American C. I. Co.*, 65 Cal. 63, it is said: 'Until litigation on the merits is ended, there is no finality to the judgment, in the sense of a final determination of the rights of the parties, although it may have become final for the purpose of an appeal from it.' And in the same

case (*Gilmore v. American C. I. Co.*, 67 Cal. 366), it is said that the judgment became final only, in the sense of the stipulation, when the time to move for a new trial and to appeal therefrom had elapsed, and no motion was made and no appeal taken. In *Harris v. Barnhart*, 97 Cal. 546, it is said: 'Until the time for an appeal has expired, if the judgment has not been sooner satisfied, the action is, under section 1049 of the Code of Civil Procedure, to be deemed as pending.' To like effect are [24] *Naftzger v. Gregg*, 99 Cal. 83, and *In re Blythe*, 99 Cal. 472, in which latter case it is held: 'That a judgment, in order to be admissible in evidence for the purpose of proving facts therein recited, must be a final judgment in the cause, and if the action in which the judgment is rendered is still pending, necessarily the judgment is not final.' And therein is quoted with approval the language of the Supreme Court of New York in *Webb v. Buckelew*, 82 N. Y. 560, where it is said: 'Until final judgment is reached, the proceedings are subject to change and modification, are imperfect and inchoate, and can avail nothing as a bar or as evidence, until the judgment, with its verity as a record, settles finally and conclusively the question at issue; and whenever it fails to fix and determine the rights of the parties, whenever it leaves room for a final decision yet to be made, it is not admissible in another action, for the plain reason that it has finally decided and settled nothing.' In *Story*

v. Story, 100 Cal. 41, the trial Court had admitted in evidence a judgment rendered in another action before the time for an appeal therefrom had expired, and this Court, in reversing the judgment, said: 'At the time that the Court made its decision in the present case, the other action was still pending (Code Civ. Proc., sec. 1049), and while that action was so pending the judgment rendered therein could not be a bar to the prosecution of the present action.' In *Brown v. Campbell*, 100 Cal. 635, the Court expounds the doctrine that *res adjudicata* applies only to final judgments, and proceeds: 'The time to appeal from the judgment of November 24 had not expired when the cross-complaint was filed, and although no appeal had been taken therefrom, the action was still pending, within the legal meaning of the term, and the judgment was not a bar to a retrial of the matters alleged in the cross-complaint, under the rule announced by this Court.' [25] (Citing cases.) While, as pointed out by Mr. Justice Harrison in his concurring opinion in *Naftzger v. Gregg*, 99 Cal. 83, and in *Cook v. Rice*, 91 Cal. 664, cases may arise in which, for certain purposes, a judgment may be evidentiary before it has become final, these cases are exceptional, and the general rule prevailing in this state is that which has been so frequently declared."

Thus we have here a decision of the Supreme Court of California construing the statutes of that State and determining that the judgment in the case

of *Douglas v. Berlin Dye Works* rendered by the Superior Court of the State of California was not final at the time of the filing of the petition in bankruptcy herein and did not become final until January 16th, 1915, when the judgment in the Supreme Court of California on appeal became final.

In *re Yates*, *supra*, was a motion by one Risdon to vacate the decree of adjudication of the District Court of the Northern District of California made January 2d, 1902, by which Yates was upon his voluntary petition adjudicated a bankrupt. The only debt mentioned in the schedule filed with the petition for adjudication was described as a judgment in favor of said Risdon rendered by the Superior Court of the State of California in and for the County of Napa on August 31st, 1901; the judgment referred to was obtained in an action for a willful and malicious injury to the person of Risdon; that after its rendition and before the decree of adjudication in bankruptcy an appeal was taken from that judgment to the Supreme Court of the State and such appeal was pending at the time of the making of the motion to vacate the decree of adjudication. District Judge DeHaven in delivering the opinion of the Court, after quoting from *Harris vs. Barnhart*, 97 Cal. 550, referred to in the [26] opinion of Mr. Justice Henshaw in *Feeney v. Hinckley*, *supra*, and also section 1049 of the Cal. Code of Civil Procedure, *supra*, said:

“The appeal, therefore, from the judgment in the action of *Risdon v. Yates* suspended its operation, and may result in its reversal; and from this it fol-

lows that at the date of the adjudication in bankruptcy, there was not, nor is there now, any certainty that the plaintiff in the action referred to will succeed in the recovery of any judgment against Yates. Such being the status of the claim of damages involved in that action, it is clear that Yates was not at the date of the filing of his voluntary petition a bankrupt, within the meaning of the law. Section 4 of the Bankruptcy Act provides that 'any person who owes debts, except a corporation, shall be entitled to the benefits of this act as a voluntary bankrupt.' In subdivision 11 of Section 1 of that act the word "debt" is defined as 'any debt, demand, or claim provable in bankruptcy'; and subdivision "a" of section 63 of the Bankruptcy Act enumerates five different classes of debts which may be proved against the estate of the bankrupt, in one of which is included 'a claim for a fixed liability as evidenced by a judgment or instrument in writing, absolutely owing by the bankrupt at the time of the filing of the petition against him'; but a cause of action against him for unliquidated damages for a personal tort, such as in involved in the action of *Risdon v. Yates*, before referred to, is not within either of the classes named. Subdivision "b" of the same Section provides:

'Unliquidated claims against the bankrupt may, pursuant to application to the Court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.'

[27]

This subdivision is not to be construed as au-

thorizing the proof of claims not declared in subdivision "a" to be provable. Its object is simply to provide that unliquidated claims which fall within the scope of subdivision "a" are to be liquidated in such manner as the Court shall direct. *Lowell, Bankr.*, p. 487; and see, also, the well-considered opinion of Judge Marshall in the case of *In re Hirschman*, 4 Am. B. R. 716, 104 Fed. 69. In the case of *In re Maples*, 5 Am. B. R. 426, 105 Fed. 919, it was held that the bankruptcy proceeding should be dismissed, where the only debt scheduled was a judgment for willful and malicious injury to the person, —a debt which, although provable under the provisions of the Bankruptcy Act would not be affected by a discharge. With much stronger reason should the decree adjudging Yates a bankrupt be vacated, and the proceeding instituted by him be dismissed, because at the date of the filing of his voluntary petition there was no existing provable debt against his estate under the Bankruptcy Act. It will be time enough for him to apply for relief under the Bankruptcy Act, and to ask the Court to pass upon the many questions which may arise in such a proceeding, when it shall be ascertained that he is indebted to some person upon a claim provable under the Bankrupt Act."

Cases in states where judgments become final and binding and may be resorted to and used as evidence and for all purposes for which a judgment may be resorted to, immediately upon their rendition, are clearly distinguishable from judgments rendered in the courts of the State of California and which

are not final until their final determination upon appeal or until the time for appeal has passed. Such is the case of *re Sheehan*, 8 N. B. R. 345; Fed. C. 12,737; in *re Lorde*, 22 A. B. A. 201. [28]

In *re Putnam*, 193 Fed Rep. 464, relied upon by counsel for claimant, was a proceeding by Kate C. Putman and others to have J. A. Folger as a director and stockholder in the Ocean Railroad Company declared a bankrupt. The preliminary liability to Kate C. Putman was upon a judgment for negligently causing the death of Frank C. Putman which fixed the secondary liability of said Folger as a director and stockholder of the Railway Company. The Court found, however, in that case that the judgment aforesaid was a final judgment which distinguishes it from the case at bar.

There is a striking analogy between the attempt to prove this claim upon the judgment rendered by the Superior Court of California and an attempt to prove a claim upon the verdict of a jury in an action whereon there is a motion for a new trial pending and where no judgment has been rendered upon the verdict.

In *Black v. McClellan* Fed. Cases No. 1462, on appeal from the District Court of the United States for the Western District of Pennsylvania it appeared that an application had been made to the District Court of the United States to permit the plaintiff to issue process on a judgment obtained by Black against McClellan in the State Court for personal injuries done by the defendant to the plaintiff. A verdict was rendered on the 12th day of January,

1875, and on the 15th day of January, 1875, a motion for a new trial was made. The motion for new trial was denied and a judgment was entered on the verdict on the 6th of May, 1875. After the verdict and prior to the entry of the judgment, to wit, on the 20th day of March, 1875, McClellan filed a petition in bankruptcy and was, on the same day, duly adjudged a bankrupt. Under the Bankruptcy Act then in force, the time of adjudication of bankruptcy was fixed as [29] the day with reference to which the provable character of the bankrupt's liabilities was to be determined.

McKENNAN, Circuit Judge, said:

“The question, then, upon which the result of the present proceeding depends is whether the amount of the verdict is a provable debt against the bankrupt. In England this was long a subject of contention, and the decisions of the English courts touching it are in direct conflict with each other. But in *Ex parte Hill*, 11 Ves. 646, where the question came before Lord Eldon, incidentally, he discussed most of the cases on both sides of it, and expressed strong doubt of the soundness of those which held that a verdict in an action for damages for a tort was a provable debt in bankruptcy, and in *Ex parte Charles*, 16 Ves. 256, where it was directly presented for decision, he ordered a commission in bankruptcy to be superseded which was issued upon a creditor's petition, whose debt consisted of a verdict for damages in an action of breach of promise of marriage rendered before the act

of bankruptcy, and upon which judgment was entered before the allowance of the commission. At the same time he directed a case to be stated for the opinion of the judges of the king's bench, who after full argument and deliberate consideration of the question, with all the cases bearing upon it, unanimously certified their opinion that the debt of the petitioning creditor was not sufficient in law to support the commission. *Ex parte Charles*, 14 East, 197. Since then the law has been settled accordingly in England.

The phraseology of the American act seems to have been employed with reference to the exposition of the English statute. All debts due or owing before the bankruptcy are provable under the British statute, but in the enumeration in the American act, this class of provable indebtedness is restricted to debts which are not only due, but payable at the time of the [30] adjudication, or whose payment is postponed to a future day.

Now, a claim which has not obtained the condition of a fixed liability cannot be characterized as a debt due and payable, either presently or at a future day, and such is the immature character of a mere verdict before judgment. It is subject to the control and discretion of the court, and may be superseded altogether by arresting judgment upon it, or by the allowance of a new trial. No action could be maintained upon it; it does not bear interest, and no determinate

character is impressed upon it until the Court has pronounced its judgment, that the plaintiff do recover from the defendant the amount of it. The judgment establishes the indebtedness and impresses the obligation of payment, and so may be said to create the debt. Not until it has passed is there a debt due and payable."

To the same effect is *In re Ostron*, 26 A. B. R. 273, where the Court held that where a claimant's assignor recovered a verdict against the bankrupt for personal injuries, but no judgment had been entered thereon prior to the bankruptcy proceedings, the verdict was not a fixed liability within section 63a (1) of the Bankruptcy Act.

I am of the opinion that the claim sought to be proved here was not a fixed liability absolutely owing at the time of the filing of the petition against this bankrupt. It was subject to the control and judgment of the Supreme Court of the State of California. It might have been superseded altogether by its reversal. No action could be maintained upon it. It was not evidence of any other proceeding until it had become final in the Supreme Court. It was not *res adjudicata* until it had become a final judgment. To be absolutely owing it must be owing beyond peradventure, positively, and unconditionally. No modified definition can be given to the expression in the statute of "absolutely owing."

[31]

It is futile to argue that the claim is a liquidated claim by reason of the judgment entered in the Superior Court of Los Angeles County; it could only

be liquidated when that judgment became a final judgment. It is not such a claim as can be liquidated subsequent to the filing of the petition in bankruptcy. Clause "b" of Section 63, to the effect, that—"unliquidated claims against the bankrupt may, pursuant to application to the Court, be liquidated in such manner as it shall direct," does not enlarge the class of provable debts, but simply provides for reducing into form, in which they may be proved, those debts, which, if liquidated, could be proved, under clause "a" as being either judgment debts, contract debts, taxes or costs. 1 Remington on Bankruptcy, Sec. 705, and cases cited.

It is not an answer to this position that because the defendant in the judgment did not give a supersedeas bond that the plaintiff could have had execution upon his judgment of the Superior Court and satisfied the same by a levy. Under the statute of California if the judgment had been satisfied it would be no longer a pending action; but the intervention of the bankruptcy proceedings within four months after the rendition of the judgment followed by the adjudication of the bankrupt would have dissolved any lien that claimant might have had by reason of the judgment or by reason of any execution that he might have issued thereon. An appeal upon a bond for costs was as an effective appeal to cause the action to be still pending, as a supersedeas bond. Moreover the right of appeal in any way, had not expired at the time of the filing of the petition in bankruptcy. [32.]

This is not a claim such as is contemplated by the

Statute Section 53a (5) "founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for discharge." This provision of the Bankruptcy Act does not enlarge the classes of debts provable against bankrupt's estate, for only those debts made provable where the original obligations merge in the judgment, are in themselves provable debts.

"The original obligation must itself have been a provable debt; that is to say, must have been a judgment or written instrument, or costs, or taxes, or any open account, or a contract, expressed or implied; and it must have been in existence at the time of the filing of the bankrupt's petition. Thus, a judgment for personal injury rendered before discharge, but after the filing of the petition, is not a provable debt. The nature of the liability, rather than the remedy by which it was enforced, determines its provability." 1 Remington on Bankruptcy, Section 697; *In re Crescent Lumber Company*, supra; *In re Southern Steel Company*, 25 A. B. R. 358, 183 Fed. 498.

The object of this provision of the Bankruptcy Act was to permit judgment to be taken after bankruptcy, where a judgment is necessary to fix the liability of those secondarily liable for the bankrupt without destroying the bankrupt's right to discharge therefrom. Evidently it is the original debt not the judgment that is to be proved. [33]

For the foregoing reasons the claim of C. K. Doug-

las will be disallowed and an order will be prepared accordingly.

LYNN HELM,
Referee In Bankruptcy.

[Endorsed]: No. ——. In the United States District Court, Southern District of California, Southern Division. In the Matter of Berlin Dye Works and Laundry Company, a Corporation, Bankrupt. On Proof of Claim of C. K. Douglas. Filed Mar. 30, 1915, at — min. past 2 o'clock P. M. Lynn Helm, Referee. C. Meade, Clerk. Lynn Helm, 918 Title Insurance Building, Los Angeles, Cal. [34]

The question presented is whether or not said order was a proper order in said proceedings, and whether or not said claim of C. K. Douglas was allowable and provable against the bankrupt estate herein.

There are no facts other than those recited in said order pertinent to this review.

I hand up herewith the claim of C. K. Douglas, and the objections of William H. Moore, Jr., Trustee, and the supplemental affidavit of E. B. Drake.

Respectfully submitted,

LYNN HELM,
Referee in Bankruptcy. [35]

*In the District Court of the United States, for the
Southern District of California, Southern Di-
vision.*

IN BANKRUPTCY No. 1367.

In the Matter of BERLIN DYE WORKS AND
LAUNDRY COMPANY, a Corporation,
Bankrupt.

Petition (to Referee) for Review.

To the Honorable LYNN HELM, Referee in Bank-
ruptcy for the Southern District of California,
Southern Division.

C. K. Douglas, a citizen in and of the County of
Los Angeles, in the Southern District of California,
Southern Division thereof, respectfully represents
to the said Referee:

That on the 6th day of April, 1915, the said Referee
made an Order disallowing and expunging from the
files herein the certain claim of your petitioner there-
tofore filed on the 14th day of February, 1914, in
the above-entitled cause for \$10,513.32, which claim
was based upon a judgment of the Superior Court
of the State of California, in and for the County of
Los Angeles, in favor of said Douglas and against
said bankrupt, rendered on the 11th day of July,
1913, for the sum of \$10,000.00 and the costs thereof,
\$97.10, and which judgment was duly affirmed in the
Supreme Court of the State of California on the
17th day of December, 1914; that a copy of said
Order is in words and figures as follows, to wit:

“IT IS ORDERED, ADJUDGED AND DECREED that the claim of C. K. Douglas, filed herein on February 14th, 1914, be disallowed and expunged from the files.

DATED: April 6th, 1915.

(Signed) LYNN HELM,
Referee in Bankruptcy.”

The claim of your petitioner, C. K. Douglas, is more fully and particularly set out in his proof of unsecured debt now on file before said Referee, to which reference is hereby made for further particulars.

Your petitioner respectfully urges that the Referee herein erred in his Order disallowing the said claim and expunging the same from the files herein against the said estate, in this, that the said claim was allowable and provable against the bankrupt estate herein; your petitioner citing and believing this as an error hereby asks for a review from the Referee's Order as above indicated.

Your petitioner further prays that the Referee herein forthwith certify to the District Court of the United States, Southern District of California, Southern Division, or a Judge thereof, the question following, to wit:

Is a person entitled to have his claim proved and allowed against a bankrupt estate, which claim is based upon a judgment of the Superior Court of the State of California, in and for the County of Los Angeles, dated July 11th, 1913, growing out of personal injuries of such claimant received through the negligence of the bankrupt on the 30th day of No-

vember, 1912, the adjudication of bankruptcy being on the 7th day of October, 1913, and claim on said judgment being filed but not heard until after the said judgment became final by affirmance in the Supreme Court of said State. [37]

WHEREFORE, your petitioner feeling aggrieved because of such Order, prays that the same be reviewed as provided in the Bankruptcy Law of 1898 and General Order XXVII.

Dated, Los Angeles, California, April 14th, 1915.

C. K. DOUGLAS,
Petitioner.

E. B. DRAKE,
Attorney for Petitioner.

State of California,
County of Los Angeles,—ss.

I, C. K. Douglas, the petitioner mentioned and described in the foregoing Petition, do hereby make solemn oath that the statements therein contained are true to the best of my knowledge, information and belief.

C. K. DOUGLAS.

Subscribed and sworn to before me this 16th day of April, 1915.

[Seal] MORA BARNES,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. In Bankruptcy No. 1367. In the District Court of the United States for the Southern District of California, Southern Division. In the Matter of Berlin Dye Works & Laundry Com-

pany, a Corporation, Bankrupt. Petition for Review. Received copy of the within Petition this 16th day of April, 1915. W. T. Craig & Carroll Allen, Dave Smith & Benj. F. Page, Attorneys for Trustee. E. B. Drake, Attorney at Law, 1308-9-10 Washington Building, Main 3073 F 3815, Los Angeles, Cal., Attorney for Petitioner. Filed Apr. 16, 1915, at — min. past 3 o'clock P. M. Lynn Helm, Referee. C. Meade, Clerk.

[Endorsed]: No. 1367. In the United States District Court, Southern District of California, Southern Division. In the Matter of Berlin Dye Works & Laundry Company, Bankrupt. Certificate for Review on Claim of C. K. Douglas. Filed Apr. 26, 1915, at 30 min. past 12 o'clock P. M. Wm. M Van Dyke, Clerk, Murray C. White, Deputy. Lynn Helm, 918 Title Insurance Building, Los Angeles, Cal. [38]

In the District Court of the United States for the Southern District of California, Southern Division.

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUNDRY COMPANY, a Corporation, Bankrupt.

Notice of Motion to Set for Hearing.

To W. T. Craig, et al., Esqs., Attorneys for Wm. H. Moore, Jr., Trustee:

Your are hereby notified that C. K. Douglas, Claimant herein, will, by counsel, on Monday, May 3d, 1915, at 10 o'clock A. M., or as soon thereafter

as counsel can be heard, before Honorable OSCAR A. TRIPPET, Judge of the above, court in his courtroom thereof, in the Federal Building, in the City and County of Los Angeles, State of California, move the Court to set the above matter for hearing of the certified question and record herein in which the said Douglas was refused allowance of his claim against the bankrupt estate, for such a date as said Court's calendar will permit.

The ground of said motion is that a question, of which said Court has jurisdiction, has been duly certified by the Referee in bankruptcy herein, for decision by this Court, [39]

Said motion will be made upon the papers on file, together with this notice of Motion.

Dated, April 28th, 1915.

E. B. DRAKE,

Attorneys for Claimant, C. K. Douglas.

[Endorsed]: Original. In Bankruptcy No. 1367. In the District Court of the United States for the Southern District of California, Southern Division. In the Matter of Berlin Dye Works & Laundry Company, a Corporation, Bankrupt. Notice of Motion to Set for Hearing of Certified Question. Received Copy of the Within Notice this 28th day of April, 1915. W. T. Craig, Dave F. Smith, Benj. Page, Attorneys for Trustee. E. B. Drake, Attorney at Law, 1308-9-10 Washington Building, Main 3073 F 3815, Los Angeles, Cal., Attorney for Claimant. Filed Apr. 28, 1915, at 2 min. past 4 o'clock P. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. [40]

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY COMPANY, a Corporation,
Bankrupt.

**Notice of Date of Hearing and Argument on
Certified Question in Claim of C. K. Douglas.**

To W. L. Craig, et al., Esqs., Attorneys for Wm. H.
Moore, Jr., Trustee:

You are hereby notified that the hearing and argu-
ment on Certified Question in the Claim of C. K.
Douglas in the above-entitled matter has been set
for 2 o'clock P. M., Monday, May 24th, 1915, before
Honorable Oscar A. Trippet, Judge of the above
court, in his courtroom thereof in the Federal Build-
ing, in the City and County of Los Angeles, State of
California.

Dated, May 6th, 1915.

E. B. DRAKE,
Attorney for Claimant, C. K. Douglas.

[Endorsed]: Original. In Bankruptcy, No. 1367.
In the District Court of the United States for the
Southern District of California, Southern Division.
In the Matter of Berlin Dye Works & Laundry Com-
pany, a Corporation, Bankrupt. Notice of Date of
Hearing and Argument on Certified Question in
Claim of C. K. Douglas. Received copy of the
within notice this 6th day of May, 1915. W. T.
Craig, Carroll Allen, A. Henderson, Stockton Attor-

neys for Trustee. E. B. Drake, Attorney at Law, 1308-9-10 Washington Building, Main 3073 F 3815, Los Angeles, Cal., Attorney for Claimant. Filed May 6, 1915, at 9 min. past 4 o'clock P. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. [41]

In the United States District Court, Southern District of California, Southern Division.

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUNDRY COMPANY (a Corporation), Bankrupt.

Opinion of the Court.

E. B. DRAKE, for Plaintiff.

W. T. CRAIG, CARROL ALLEN, DAVE F. SMITH, BENJAMIN E. PAGE, and A. HENDERSON STOCKTON, for Trustee.

C. K. Douglas brought suit against the Berlin Dye Works and Laundry Company, in the Superior Court of California, for injuries to his person resulting from a tort. He obtained judgment against the defendant, and the defendant appealed therefrom without giving a supersedeas bond. Thereafter, an involuntary petition in bankruptcy was filed, and the defendant was declared a bankrupt. Douglas presented a claim against the bankrupt estate, for allowance, based upon said judgment, while the appeal was pending. Whether the claimant's judgment is provable depends upon whether or not it is a final judgment. Section 942 of the Code of Civil Procedure of California, provides that if the appeal

be from a judgment or order directing the payment of money such as this judgment is, it does not stay the execution of the judgment unless a bond is given for said purpose. It has been held by the Supreme Court of California that, during the time allowed for an appeal, and while an appeal is pending from a judgment, it cannot be introduced in evidence, and the Statute of Limitations does not run against [42] a suit thereon. *Feeney vs. Hinckley*, 134 Cal. p. 467. This case was decided by a divided court. The great weight of authority is to the effect that the pendency of an appeal will not deprive the plaintiff of his right to sue on the judgment, unless there has been a stay of proceedings. 23 Cyc. 1504, 1563; 2 Cyc. 974; *Taylor vs. Shew*, 39 Cal. 536; *Dowdell vs. Carpy*, 137 Cal. 338; *Rogers vs. Superior Court*, 126 Cal. 183; *Cook vs. Rice*, 91 Cal. 668; *Dore vs. Southern Pacific Company*, 163 Cal. 195.

The case of *Taylor vs. Shew*, *supra*, was an action upon a judgment obtained in New York, from which an appeal had been taken without a supersedeas bond. The Supreme Court of California said:

“In the absence of any proof to the contrary, the presumption is that the effect of the alleged appeal by the laws of New York is the same as in this State; and in this State such appeal would not stay execution or proceedings for the collection of the amount of the judgment appealed from, pending the appeal, nor destroy or weaken the force and effect of the record of

the judgment as evidence of the facts or matters necessarily determined thereby.”

This opinion of the Supreme Court of California has never been reversed or criticised. It has been cited, with approval, in many jurisdictions, and the Supreme Court of California has approved it. The case is in conflict with the decision in *Feeney vs. Hinckley*, *supra*, and the cases relied upon in that decision. To say that an action may be brought upon a judgment from which an appeal has been taken without a supersedeas bond, but that such judgment could not be introduced in evidence, would be a paradox. It would be keeping the word of promise to the ear and breaking it to the hope.

The matter, however, was before the Supreme Court of [43] California in a more recent decision than *Feeney vs. Hinckley*. In *Dowdell vs. Carpy*, 137 Cal. 338, the Court said:

“On the appeal taken from that judgment no bond staying execution had been filed, and, treating it as a deficiency judgment in accordance with the stipulation, there was, then, nothing to prevent an action being brought on such judgment at any time after it was rendered. (*Taylor vs. Shew*, 39 Cal. 536; *Clark vs. Child*, 136 Mass. 344.) The judgment was a proper basis for an action, and as it arose out of the same transaction and is connected with the subject of this action, it was clearly the proper basis for a counterclaim herein. (Code Civ. Proc., sec. 438.)” The judgment rendered in favor of the claimant, was final, and created an absolute liability of the Bankrupt. Notwithstanding the appeal from

the judgment, it could not be reversed or modified. This is necessarily so because the judgment contained no error or infirmity upon which the Supreme Court could predicate a reversal or modification. The question is asked, however, how is this Court to know whether or not it would be reversed or modified until the appeal is finally disposed of. That can be ascertained by an inspection of the record, or by postponing the matter until the Supreme Court acts. The Referee pursued the latter course in this matter. This practice was approved in *Bank of America vs. Wheeler*, 28 Conn. 433; *Dawson vs. Daniel*, 7 Fed. Cases, 3668, and by the Supreme Court of California in *Dore vs. Southern Pacific Company*, 153 Cal. 195.

The claim will be allowed.

July 6th, 1915.

OSCAR A. TRIPPET,
Judge. [44]

No. 1367. Bkey. U. S. District Court, Southern District of California, Southern Division. In the Matter of Berlin Dye Works & Laundry Company (a corporation), Bankrupt. Opinion. Filed July 6, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [45]

**[Order Reversing Order of Referee in Bankruptcy
and Allowing Claim of C. K. Douglas, etc.]**

At a stated term, to wit, the January term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the City of Los Angeles, on Tuesday, the sixth day of July, in the year of our Lord, one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge:

No. 1367—Bkey. S. D.

In re BERLIN DYE WORKS & LAUNDRY COMPANY, Bankrupt.

This matter having heretofore been submitted to the Court for its consideration and decision on a review of the order of the Referee in bankruptcy disallowing the claim of C. K. Douglas; the Court, having duly considered the same and being fully advised in the premises, now hands down its opinion herein, and it is ordered accordingly, that the said order of the Referee in bankruptcy be, and the same hereby is reversed, and that said claim of C. K. Douglas be, and the same hereby is allowed, to which ruling of the Court, W. T. Craig, Esq., of counsel for the Trustee, asks for, and is, by the Court, allowed an exception. [46]

*In the District Court of the United States, Southern
District of California, Southern Division.*

In the Matter of BERLIN DYE WORKS AND
LAUNDRY COMPANY, a Corporation,
Bankrupt.

Judgment.

The above cause coming on to be heard before the Court on Petition for Review on the Claim of C. K. Douglas, seeking to have reviewed the Findings, and Order thereon, of Lynn Helm, Referee, disallowing and expunging from the files the certain claim of the said C. K. Douglas, Petitioner, filed on the 14th day of February, 1914, and which Order was entered April 6th, 1915, by said Referee, and the question being certified to this Court, as follows, to wit:

Is a person entitled to have his claim proved and allowed against a bankrupt estate, which claim is based upon a judgment of the Superior Court of the State of California, in and for the County of Los Angeles, dated July 11th, 1913, growing out of personal injuries of such claimant received through the negligence of the bankrupt on the 30th day of November, 1912, the adjudication of bankruptcy being on the 7th day of October, 1913, and claim on said judgment being filed but not heard until after said judgment became final by affirmance in the Supreme Court of said State.

And the Court having heard argument of counsel and being fully advised is of the opinion that the said question so certified should be answered in the

affirmative, and, therefore, [47] that the said claim of C. K. Douglas should be allowed, a written Opinion of the Court so holding thereon being filed herein.

IT IS, THEREFORE, ORDERED, DECREED AND ADJUDGED that the Finding of the Referee, and his Order thereon of April 6th, 1915, disallowing the said claim of the said C. K. Douglas and expunging the same from the files herein, be, and the same is hereby, reversed and set aside, and the said Referee is ordered and directed to allow said claim as a provable one against the assets of said Bankrupt Estate.

Dated, July 7th, 1915.

OSCAR A. TRIPPET,

Judge.

[Endorsed]: Original. In Bankruptcy. No. 1367. In the District Court of the United States for the Southern District of California, Southern Division. In the Matter of Berlin Dye Works and Laundry Company, a Corporation, Bankrupt. Order on Claim of C. K. Douglas. Filed Jul. 7, 1915, at 40 min. past 3 o'clock P. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. E. B. Drake, Attorney at Law, 1308-9-10 Washington Building. Main 3073 F 3815, Los Angeles, Cal., Attorney for Claimant. [48]

ORIGINAL.

*In the District Court of the United States, Southern
District of California, Southern Division.*

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY COMPANY, a Corporation,

Bankrupt.

C. K. DOUGLAS,

Petitioner,

vs.

WM. H. MOORE, Jr., Trustee in Bankruptcy of
the Estate of BERLIN DYE WORKS &
LAUNDRY COMPANY, a Corporation,
Bankrupt,

Respondent.

Notice of Appeal.

To E. B. Drake, Esq., Attorney for Claimant and
Petitioner, C. K. Douglas, and Wm. M. Van
Dyke, Esq., Clerk of the District Court of the
United States, Southern District of California:

Sirs: Please take notice that Wm. H. Moore, Jr.,
Trustee in bankruptcy of the above named, Berlin
Dye Works & Laundry Company, a corporation,
bankrupt, hereby appeals from the minute order en-
tered herein on the 6th day of July, 1915, and from
the order signed and filed herein on the 7th day of
July, 1915, and from each of said orders, reversing
and setting aside the order heretofore made herein
by the Honorable Lynn Helm, Referee in bank-
ruptcy, disallowing the claim of C. K. Douglas and

expunging same from the files herein, and ordering and directing that said claim be allowed as a provable claim against the assets of said bankrupt estate, to the Circuit Court of Appeals [49] for the Ninth Circuit, to be holden in and for said Circuit at the City of San Francisco, in the State of California.

Dated, July 10th, 1915.

Yours, etc.,

W. T. CRAIG and
CARROLL ALLEN,
BENJAMIN E. PAGE,
DAVE F. SMITH,

Attorneys for Said Trustee.

[Endorsed]: Original. No. 1367. Bankruptcy. In United States District Court, Southern District of California, Southern Division. In the Matter of Berlin Dye Works & Laundry Company, a Corporation, Bankrupt. C. K. Douglas, Petitioner, vs. Wm. H. Moore, Jr., Trustee. Notice of Appeal. Received Copy of the Within Notice of Appeal this 12 day of July, 1915. E. B. Drake, Attorney for C. K. Douglas, Petitioner. W. T. Craig & Carroll Allen, Benjamin E. Page & Dave F. Smith, Attorneys for Trustee. Filed July 12, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [50]

ORIGINAL.

*In the District Court of the United States, Southern
District of California, Southern Division.*

In the Matter of BERLIN DYE WORKS & LAUN-
DRY CO., a Corporation,

C. K. DOUGLAS,

Bankrupt,

Petitioner,

vs.

WM. H. MOORE, Jr., Trustee,

Respondent.

Assignment of Errors.

Comes now Wm. H. Moore, Jr., Trustee in bankruptcy of the estate of said Berlin Dye Work & Laundry Company, a corporation, bankrupt, and files the following assignment of errors:

First: The United States District Court for the Southern District of California, Southern Division, erred in reversing and setting aside the finding and order of the Referee in said bankruptcy proceeding, disallowing and expunging from the files the claim of said C. K. Douglas.

Second. Said Court erred in ordering and directing said Referee to allow said claim of C. K. Douglas as a provable claim in bankruptcy.

Third. Said Court erred in allowing said claim of C. K. Douglas as a provable claim against the estate of said bankrupt.

Fourth. Said Court erred in not finding that said claim was not a provable claim against the estate of said bankrupt.

Fifth. Said Court erred in not affirming the finding and order of the Referee herein on the claim of said C. K. Douglas.

W. T. CRAIG and
CARROLL ALLEN,
BENJAMIN E. PAGE,
DAVE F. SMITH,

Attorneys for Said Trustee. [51]

[Endorsed]: Original. No. 1367. Bankruptcy. In United States District Court, Southern District of California. In the Matter of Berlin Dye Works & Laundry Co., a Corporation, Bankrupt. C. K. Douglas, Petitioner, vs. Wm. H. Moore, Jr., Trustee, Respondent. Assignment of Errors. Received Copy of the Within Assignment of Errors this 12th Day of July, 1915. E. B. Drake, Attorney for C. K. Douglas, Petitioner. W. T. Craig, Board of Trade Rooms, Higgins Building, Los Angeles, Cal. Telephones: Home 10112, Sunset Main 4622. Filed July 12, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [52]

ORIGINAL.

*In the District Court of the United States, Southern
District of California, Southern Division.*

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY COMPANY, a Corporation,
Bankrupt.

C. K. DOUGLAS,

Petitioner

vs.

WM. H. MOORE, Jr., Trustee in Bankruptcy of
the Estate of BERLIN DYE WORKS &
LAUNDRY COMPANY, a Corporation,
Bankrupt,

Respondent.

**Petition for Allowance of Appeal and Order
Allowing the Same.**

To the Honorable Judges of the United States Dis-
trict Court for the Southern District of Cali-
fornia:

Wm. H. Moore, Jr., Trustee in bankruptcy of the
estate of the above-named bankrupt, conceiving him-
self aggrieved by the Minute Order entered on the
6th day of July, 1915, and by the Order signed and
filed on the 7th day of July, 1915, in the above-en-
titled proceeding, and by each of said Orders, re-
versing and setting aside the order of the Referee
therefore made in said proceeding, disallowing
the claim of C. K. Douglas and expunging the same
from the files of the case, and ordering and direct-

ing that said claim be allowed as a provable claim against the assets of said bankrupt estate, does hereby petition for an appeal from the said orders, and from each of them, to the United States Circuit Court of Appeals for the Ninth Circuit, [53] and prays that his *his* appeal may be allowed and a citation granted directed to the said C. K. Douglas, commanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

WM. H. MOORE, Jr.,

Trustee.

W. T. CRAIG and

CARROLL ALLEN,

BENJAMIN E. PAGE,

DAVE F. SMITH,

Attorneys for Said Trustee.

The foregoing appeal is hereby allowed.

Dated, July 12, 1915.

OSCAR A. TRIPPET,

District Judge.

[Endorsed]: No. 1367. Bankruptcy. Original. In United States District Court, Southern District of California, Southern Division. In the Matter of Berlin Dye Works & Laundry Company, a Corporation, Bankrupt. C. K. Douglas, Petitioner, vs. Wm. H. Moore, Jr., Trustee, etc., Respondent. Petition for Allowance of Appeal and Order Allowing the

Same. Received Copy of the Within Petition this 12th day of July, 1915. E. B. Drake, Attorney for C. K. Douglas, Petitioner. W. T. Craig & Carroll Allen, Benjamin E. Page & Dave F. Smith, Board of Trade Rooms, Higgins Building, Los Angeles, Cal. Telephones: Home 10112, Sunset Main 4622, Attorneys for Trustee. Filed July 12, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [54]

ORIGINAL.

In the District Court of the United States, Southern District of California, Southern Division.

IN BANKRUPTCY—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY COMPANY, a Corporation,
Bankrupt,

Praeceptum for Transcript of Record.

To the Clerk of Said Court:

Sir: Please issue a certified copy of the records in the above-entitled proceeding, consisting of the papers following:

1. Proof of Unsecured Debt of C. K. Douglas.
2. Supplemental Affidavit of E. B. Drake.
3. Objection of Trustee to Claim of C. K. Douglas.
4. Certificate for Review on Claim of C. K. Douglas and Petition for Review.
5. Notice of Motion to Set Certified Question for Hearing.
6. Opinion of Court.
7. Minute Order of July 6th, 1915.

8. Order Signed and Filed Herein, July 7th, 1915.
9. Notice of Appeal.
10. Petition for Appeal and Allowance of Same.
11. Assignment of Errors.
12. Citation.
13. Praecept for Transcript of Record. Said Record to be Certified Under the Hand of the Clerk and the Seal of the Court.

W. T. CRAIG and
CARROLL ALLEN,
BENJAMIN E. PAGE,
DAVE F. SMITH,

Attorneys for Trustee. [55]

Receipt of a copy of the foregoing Praecept is hereby admitted this 16th day of July, 1915, and it is stipulated and agreed that the papers mentioned and described therein are all the papers necessary to a determination by the Circuit Court of Appeals of the appeal prosecuted by said Trustee.

E. B. DRAKE,
Attorney for Claimant and Petitioner, C. K. Douglas.

[Endorsed]: Original. No. 1367. In United States District Court, Southern District of California, Southern Division. In the Matter of Berlin Dye Works & Laundry Company, a Corporation, Bankrupt. Praecept for Transcript of Record. Filed Jul. 16, 1915, at 20 Min. Past 4 o'clock P. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. W. T. Craig, Board of Trade Rooms, Higgins Building, Los Angeles, Cal. Telephones: Home

10112, Sunset Main 4622. Attorneys for Trustee.
[56]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

BKCY.—No. 1367.

In the Matter of BERLIN DYE WORKS & LAUN-
DRY COMPANY, a Corporation,
Bankrupt.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing fifty-six (56) typewritten pages, numbered from 1 to 56, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Proof of Unsecured Debt due C. K. Douglas, Objection to Claim of C. K. Douglas, Supplemental Affidavit of E. B. Drake, Certificate of Referee for Review on Claim of C. K. Douglas, Notice of Motion to set for Hearing of Certified Question, Notice of Date of Hearing and Argument on Certified Question, Opinion of the Court on Certified Question, Minute Order of July 6, 1915, reversing Referee, Order of July 7, 1915, reversing Referee and allowing Claim, Notice of Appeal, Assignment of Errors, Petition for Allowance of Appeal and Order Allowing, and Praecipe for Transcript of Record in the above and therein entitled matter, and that the same

together constitute the record on appeal of the Trustee from the order allowing the claim of C. K. Douglas, as specified in the Praecipe for Transcript of Record, filed in my office on behalf of the said Trustee. [57]

I do further certify that the cost of the foregoing record is \$28.10, the amount whereof has been paid me by Wm. H. Moore, Jr., Trustee in bankruptcy of the Estate of Berlin Dye Works and Laundry Company, a Corporation, Bankrupt, the appellant in said matter.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States, for the Southern District of California, Southern Division, this 30th day of September, in the year of our Lord, one thousand nine hundred and fifteen, and for our Independence, the one hundred and fortieth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By Leslie S. Colyer,
Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Cancelled
9/30/15. L. S. C.] [58]

[Endorsed]: No. 2665. United States Circuit Court of Appeals for the Ninth Circuit. Wm. H. Moore, Jr., Trustee in Bankruptcy of the Estate of Berlin Dye Works and Laundry Company, a Corporation, Bankrupt, Appellant, vs. C. K. Douglas, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Received October 4, 1915.

F. D. MONCKTON,
Clerk.

Filed October 6, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

**[Order Enlarging Time to and Including November
1, 1915, to Docket Cause and File Record in
Appellate Court.]**

*In the United States Circuit Court of Appeals, Ninth
Judicial Circuit.*

WM. H. MOORE, Jr., Trustee.

In the Matter of BERLIN DYE WORKS & COM-
PANY (a Corporation),

Appellant.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said Appellant to docket said cause and file the record thereof, with the clerk of the United States Circuit Court of

Appeals for the Ninth Circuit, be, and the same is hereby enlarged and extended to and including the 1st day of November, 1915.

Los Angeles, California, August 6th, 1915.

OSCAR A. TRIPPET,

United States District Judge, Southern District of
California. [60]

California.

[Endorsed]: No. 2665. United States Circuit Court of Appeals for the Ninth Circuit. Wm. H. Moore, Jr., Trustee. In the Matter of Berlin Dye Works & Company (a Corporation). Order Extending time to File Record. Filed Sep. 7, 1915. F. D. Monckton, Clerk. Refiled Oct. 6, 1915. F. D. Monckton, Clerk.